



1)

Law Governing

In order to determine if a breach of contract occurred in the valid contract between Stan and Best for the tomatoes, the courts need to decide what law will govern the contract. Contracts for goods are governed by the UCC and contracts for services are governed by common law. The facts state that a valid written contract was formed between the parties, Stan, the Seller and Best, the buyer so the parties must have made an offer, had mutual acceptance and consideration to the intended terms in the offer creating a duty by the parties to perform to the contract. Here, Stan is a farmer and he is selling 5000 bushels of tomatoes for \$100 per bushel to a buyer, Best Maker Company (Best), to be delivered on July 1, the tomatoes under the UCC are defined as tangible goods. Therefore, this is a contract for goods not services and the governing law to apply will be the UCC.

Merchants

Under the UCC, merchants are persons that have expertise, experience, knowledge peculiar to the goods in the contract. Here, Stan is a farmer of tomatoes, he deals in farming and deals in the production of tomatoes on his farm. Best is a company that deals with some type of use for the tomatoes. Both will be said to have knowledge peculiar to tomatoes and experience in the goods. Therefore, the parties will be considered merchants and rules that apply to merchants under the UCC will also apply.

Time is of essence

Contract terms are required to be certain and definite under the UCC. If a term in the contract states that time is of the essence then performance will be required on or prior to the time stated. Most courts will look to the contract terms and the intent of the parties, trade and customs can also be used to prove what is customary in the event that the term is ambiguous. Here, the parties state delivery to be on July 1, this is certain and definite and performance would be expected on July 1 for the delivery of the tomatoes by Stan. However, Stan e-mails Best that he needs to change delivery. If time is of the essence Stan will not be allowed and will have

committed a breach if Best states time was of the essence unless he accepts the change in delivery.

Modification

Traditionally, all contracts require that if a modification is material to the contract, new consideration is needed. Consideration is a benefit, detriment exchange upon which is necessary under contract formation and modification. Modernly, with merchants, a modification does not need consideration.

Here, the term of delivery is set for July 1 of the tomatoes from Stan to Best. Stan e-mailed Best on May 15, that due to rains the tomato ripening has slowed and delivery will be delayed by two weeks which changes a term in the contract from July 1 delivery to July 15. This will be a modification of a material term, but the issue is resolved simply by Best reply of "OK" meaning that Best is accepting the new delivery date therefore, the time of the essence can be said to be excused and because the two are merchants no new consideration is needed.

Types of breach

In order to determine if a party breaches a contract the UCC will look to the terms of the contract to see if a party failed an absolute duty to perform. There are two types of breach, material and minor. A material breach is one when a party fails to perform substantially to the terms whereby it will excuse the non-breaching parties duty to perform, but a minor breach will not excuse a duty to perform.

Anticipatory repudiation

Anticipatory repudiation is found when a party prior to performance states unequivocally repudiates the contract will not perform. Here, when Best met with Delta on May 22, Delta told Best that the rains had damaged Stan's tomato crops, that Stan would be unable to perform all his contract. Stan has not repudiated because he was not in the conversation at this point. Best now has doubts that Stan will perform.

Request for Assurances

A party that has reasonable doubt that the other party may fail to perform to the terms of the contract may make a demand for assurances from the party that the party will be able to perform to the terms of the contract. Here, because of Best's doubts, he reasonably calls Stan and states Delta's claim, but Stan merely states "I won't know until June 10th whether I will have enough tomatoes for ALL my contracts. Here, this is not a repudiation because it is also some doubt but it also does not give Best assurance of performance so Best replies "I need commitment by May 27 and state OR We'll buy elsewhere." Without replying back Stan before that time would not be reasonable at least in answering Best's demand for assurance. Therefore, it could be argued that no response prior or on May 27th is anticipatory repudiation by Stan by failing to respond to Best's assurance demand.

A party who request assurance under a contract that receives no response may be excused from performance. Here, Best belief that Stan repudiated and contracted with another buyer but the problem here is NOTICE. UCC requires that merchants give notice to the party of their intent that the belief the contract is breached. Since Best did not inform Stan, it could be said that is action of finding another seller was a breach of the Stan/Best contract without notifying Stan. This will fail though because he did give Stan notice, Best told Stan if you don't respond by May 27th I'll buy elsewhere. Therefore, Best is not in breach of the contract Stan breached by not responding to the assurance demanded.

Stan v. Best

Damages

In contract, a party is entitled to expectation damages meaning the benefit of the bargain. Expectation damages will put the non-breaching party to the position the party would have been in if the contract had been fully performed. The damages can also include consequential and incidental. Consequential damages are those that are also foreseeable at the time of formation and incidental will be damages that occur when the non-breaching party incurs as a result of trying to obtain what he expected.

Remedies available to Seller, under the UCC, are determined by looking at the contract price minus the resale price, plus consequential and incidental. The party

also has a duty to mitigate damages. Here, if in the event that Stan can prove that he did not breach, he would be entitled to the benefit he would have received. Here, Stan sold his crop at a loss, he was supposed to receive 100 per bushel but only received 95 per bushel. He mitigated in good faith by selling the crop and if entitled to damages he would receive the 5.00 under per bushel in money damages from Best.

Remedies available to Buyer, under the UCC, the cost to replace the goods minus the cost of the contract price, plus consequential and incidental. The party also has a duty to mitigate damages. Here, Best bought the replacement goods from another Seller, Agro-Farm at 110 per bushel. Therefore, Best would be entitled to 10.00 per bushel from Stan.

Here, Stan repudiated the contract by not responding to Best's request to give assurances by May 27. This breach of duty will excuse Best performance under the contract. Therefore, Stan will not recover his lost profits because Best did not need to perform under the contract. Therefore, Stan will be entitled to nothing due to his breach.

Therefore, the counter suit by Best to recover due to the breach by Stan by not responding to his request for assurances will entitle Best to recover the 10 over the price he paid per bushel.

Question #1 Final Word Count = 1324

END OF EXAM



2)

1. Did the court properly admit the 911 tape into evidence?

Under CA law, Proposition 8, the victim's right allows evidence to come in that is relevant unless it qualifies under the exceptions of privilege, hearsay, US Constitution, statutory provisions and judicial discretion. In addition, relevant evidence under the CEC, is evidence is a fact of consequence in the matter that is more or less probable that without it if it is responsive to a fact of matter in the case. It must also meet with legal relevance that the probative value of the evidence outweighs prejudice effect.

The prosecution must present each element of the crime to the court. Here, the prosecution must ID the suspect, along with all the battery elements, of intent to cause an offensive touching, the causal connection of the defendants act, the injury to the victim. Here, the 911 tape will be considered relevant to the identification of the person who committed the crime which is a fact of consequence in the matter which is needed to identity. Therefore, it is logically relevant. Under logical relevance, the 911 tape, according to the judges discretion can be kept out if the judge determines admission of the evidences does not outweigh the prejudice to the defendant or confuses the jury. Here, the court allowed it an unless the judge committed an abuse of discretion, it will be allowed.

The first objection by Deb, the defendant, would be the 911 tape is Hearsay.

Hearsay is an out of court statement offered for the truth of the matter asserted which will keep out relevant evidence because under CA, if the statement may be questioned for truthfulness and reliability. Under privilege a party that holds the privilege will not have to testify and this is exempt from the Prop 8. The Vic and Deb have two privileges that may apply are spousal communications and immunity as well apply to marital relationships. Even though they are not married, under CA law, live-in companions will qualify as spouses. With regards to Prop 8 the domestic violence victims in live-in relationships may be allowed to testify. Here, Vic is refusing to testify to the events to identify Deb as the perpetrator which is right both Vic and Deb can assert but Vic did admit to making the 911 call.

Here, the 911 tape, Vic called the police to report about two minutes after the beating occurred and is being entered into evidence to ID the defendant as the person who committed the battery against her boyfriend because the tape occurred immediately after that alleged battery by the boyfriend to the police to report the incident. This is a statement being offered to prove that Deb beat Vic and it was made out of court, therefore it is considered hearsay.

The 911 tape is also a tape that was recorded by the police, so it is considered double hearsay, hearsay within hearsay requires both statements to have an exception to the hearsay in order to be admitted into evidence. The public records exception requires evidence that is made in the ordinary course of business, recorded by the person who is responsible for recording and the recording is accurately made by the person recording. Here, the facts state that the recording met with the business recording exception but the statements by Vic were not covered by the business record exception.

Therefore, a question of truthfulness can be asserted by Deb as to the actual statement by Vic and the hearsay of reliable should keep it out unless it meets with an exception.

Present sense is a statement that occurs while the event is being perceived in CA law. Here, this event happened two minutes prior to the phone call and will not be while the beating took place. Therefore, this exception will not apply to bring the hearsay in.

Excited utterance applies if the party making the statement immediately after the event is still under the stress of the event, the statement is so closely made to the actual event that it is said as a result of the stress of the event. Here, the call was made two minutes after the event, however, we do not know if Vic is still under the stress of the event. A beating can produce lots of excitement and stress and it could take time to wear off so it may be that this is why the call was made to report while still under the stress of the event. Therefore, this hearsay exception will make the statement come in as being truthful since Vic was still under the stress of the battery when he called 911 to report the incident.

Confrontation clause of the 911 call

A fair trial requirement of the defendant would be under the 6th Amendment of the US Constitution, the confrontation clause gives the defendant a right to confront witnesses, the party that is being tried therefore must have a right at trial to cross all witnesses that testify. Here, Deb will state because she is not allowed to confront Vic the 911 tape should not be allowed to come in. Since the evidence is a statement by Vic that Deb, my girlfriend, had beaten him, this will be considered testimonial and will then prompt a right by the 6th amendment to confrontation at trial.

The prosecution will argue the tape must be considered non-testimonial to be exempt from the hearsay requirement. Here, the tape is testimonial if it is being asserted that Vic was the perpetrator. Non-testimonial would be statements made in the course of investigation, preliminary questions, to obtain evidence or information to lead to evidence. In CA, the courts allow 911 tapes to come in as non-testimonial evidence.

Therefore, the court did not err when allowing the 911 tape to be admitted into evidence.

2. Sam's testimony about his prior relationship with Deb.

Relevant defined supra. Here battery is a violent crime so character evidence that is a trait of the crime is relevant. Deb has a habit of beating on her boyfriend, she has a past of violence. Therefore, testimony of violent behavior rather than peaceful behavior may be relevant if legal relevance does not keep it out. This is highly probative in that the jury may find that because Deb beat in the past she may have beaten Vic too. The judge has the discretion to keep this out. Here, the judge admitted it so it may meet the relevancy necessary.

In criminal court, character evidence (CE) is not allowed to be admitted to establish propensity to commit a crime. However, character evidence of reputation, opinion and specific acts are allowed in certain circumstances. CE is allowed if the character trait is an element of the crime. Here, there is a battery, so the fact that a person is violent or peaceful may be established if the probative value does not keep it out. CE is also allowed to prove identity, habit, motive, intent, common scheme in the form of reputation and opinion. However, specific acts of the CE can

ONLY be allowed only if the defendant opens the door to the character trait.

Character trait of violence is an element. The prosecution will argue that to ID Deb this evidence is not to prove propensity or is not prove that she has the character trait but that she has a habit towards violence.

Here, prosecution presents the case first and calls Sam, Deb's prior boyfriend. Sam states that Deb threatened to choke him to death if he left her and that Deb beat Sam several times while they lived together and the defense did not object to Sam's testimony. But the prosecution was not allowed to give any specific acts committed by Deb unless Deb opens the door and states, she is not a violent person or she is a peaceful person. Therefore, in spite of no objection, the court should not have allowed Sam's testimony to be presented until after Deb brought her CE into the case by her own testimony of being either peaceful or nonviolent.

Therefore, the timing of this testimony by Sam was too soon and the court should not have allowed it until Deb opened the door.

3 Should the court have admitted the computer print-out into evidence?

Relevant defined supra.

Here, the evidence of where Deb was at the time of the crime is relevant to her defense of an alibi. It is not probative to outweigh any prejudice and should be admitted as relevant.

Authentication

This is a problem because to authenticate, the party must establish that the documents are what they purport to be and created must establish truthfulness and accuracy. Here, Deb offers a print out that state dates and times from her computer show she was working 20 miles away at the time of the crime. She further states her clock was set to a time correctly to show accuracy. This is suspect as a person can change a computer clock to be anytime. The authentication is not met.

Therefore, the print-out should not have been admitted into evidence.

Question #2 Final Word Count = 1524

END OF EXAM



3)

Ethical violations committed by Lou

Duty of competence

According to the ABA and CA, a lawyer has a duty to have the skill, knowledge and experience to assist a client. The exception of emergency applies to a lawyer if immediacy is required and the lawyer is not competent in that area. Here, Lou is an estate planning attorney, he has never represented defendants in a criminal case before. If Lou can obtain competency he can agree to represent someone not in the area he normally is competent in and would be allowed to assist in a simple criminal case. Betty and Sheila were charged with armed robbery. Armed robbery is not a simple case, like personal injury or larceny. It is very complicated and requires a level of knowledge and skill. Therefore, Lou should not have agreed to represent the two.

Conflicts of interest

A lawyer also has a duty not to represent past, present or concurrent if a conflict of interest may arise. Representation of two parties that are adverse are usually not allowed. Here, Betty and Sheila are two persons charged with armed robbery, they both deny the charges, but the possibility of a conflict arises can occur. With representing more than one client in the same matter, the attorney must assure that the potential for a conflict does not occur. Here, the actual retainer agreement states a very general statement that Lou will make every effort to inform clients of potentially conflicting representation. It does not state that the potential of representing the two accused that a conflict could develop or state that they should seek outside counsel and obtain informed consent. Therefore, Lou is breaching a duty to avoid a conflict of interest to both potential clients by not stating that there is a possibility in the litigation that they may become adversaries in the criminal trial.

Fees and Expenses

A lawyer has a duty to charge reasonable fees and also to address how funds will be paid out. A lawyer is allowed to advance the costs of prosecution, but may not

loan money to clients. Contingency fees under the ABA are not allowed in criminal matters and marital matters, CA, allows only for marital. The fees should be in proportion to the services rendered, usually hourly rate in both ABA and CA.

Here, Lou has stated that if the clients win the case he will be paid 10,000 in addition to costs incurred. Therefore since this fee agreement is a contingency fee, not fees in proportion to hours worked and will not be allowed under both the ABA or CA.

Duty of candor

Question #3 Final Word Count = 439

END OF EXAM



4)

In CA the community property is all property acquired during marriage is presumed community property and separate property is all property acquired before marriage and property acquired during marriage by gift, devise, descent or bequest is presumed to be that spouse's separate property. In addition, the property can change form and it will still retain the status of community or separate property. Also wages earned during property will be community property and each spouse has both management and control over all community property. However pensions, checking accounts, property acquired before marriage may establish property is separate property, during marriage property can be change form if evidenced by a writing. Upon divorce the community property will be split by the parties and the separate property will remain each spouses separate property.

The Townhouse in the divorce proceeding between Harry and Wilma.

As stated above the property acquired before marriage is considered separate property of the spouse. Here, after retirement in 2010, Wilma to her lump sum of her pension and bought and acquired a mortgage on the Townhouse before she married Harry in 2012.

Therefore, since Wilma received a pension prior to marriage, both the lump sum and the installments during marriage will be considered her separate property but the actions during marriage may change the form of the property.

The townhouse that is presumed to be Wilma's separate property, can be rebutted by Harry as part of the community. because after marriage, Harry used his earnings to pay the mortgage on the Townhouse, those earnings from store are community property as stated above.

Therefore, the community has acquired a right to a pro rata share of the property on divorce in proportion to the value appraised. The actual percentage is a formula stating the value at the time of separation. Here, the couple separated in 2016, and in CA, it is not when the couple actually instituted divorce proceedings but

when the couple stopped acting as a community. Therefore, the formula would take the amount of the mortgage payments made between 2012 and 2016 to come up with what was paid on the mortgage by the community. Then the total would have to be divided by the actual appraised value less what Wilma paid out of her lump sum. After the court comes up with the percentage of ownership by the community, that value would be charged to Wilma since she will retain her townhome.

The motorboat

The motorboat was acquired during marriage and the funds to purchase the boat were from Wilma's separate property account. The source is Wilma's pension monthly installments which are deposited into a bank account in her name alone along with some wages from Wilma during marriage.

Commingling funds occurs when a spouse puts community property into an account that contains separate property. The court must determine what part of the account is Wilma's separate property and what is community property through a process called tracing. Here, Wilma was working as a free lance accountant and depositing the wages earned into her pension bank account. The actual purchase of the boat came from this account. The problem here is that Wilma is pulling more money out of the account than what she earns to pay for household expenses. Therefore, the boat through tracing can be proven to be Wilma's separate property at the purchase of the boat.

Actions

Title

In CA, the boat was titled in Wilma's name, however this is not controlling it only presumes ownership, but it can be rebutted. The action of the parties show that the boat was not used by Wilma alone but by both parties. Therefore, even if it was her intent to make the boat by putting it in her name to be her separate property, the action shows contrary that the two are using it.

Gifts to the community

A gift is separate property if received during marriage but it must be personal in nature, usually small items, jewelry or used by one party exclusively to be even considered separate property. Here, the facts do not state that Harry bought Wilma a gift of the boat, and the couple jointly use the boat, in addition Wilma used her monies to purchase it. Therefore, boat may be a gift to the community.

Transmutation

Transmutation occurs when property is acquired and put in a spouse's name alone during marriage, after 1984, under the anti-Lucas rule property acquired to change form of that property must be evidenced in writing signed by the parties. Here, the acquisition of the boat would have required that both Wilma and Harry in writing consent to the property changing form from Wilma's separate property to community property. Therefore, since no writing exists, the boat which can be traced as Wilma's pension installments from her bank account is not community property and Harry will not be able to rebut the presumption that it is Wilma's boat.

The personal injury settlement

In CA, during marriage if a person is injured the settlement becomes community property but on divorce the settlement will be retained by the spouse who was injured unless a necessity for expenses will apply.

Here, Harry was injured during marriage so the settlement will be presumed community property but since the couple are divorcing the settlement will become Harry's separate property. Wilma can attached from the settlement half of any medical or legal expenses incurred as a result of the settlement that the community had to pay.

In addition, if Wilma is left indigent because of the split of the community and has a necessity for living expenses, she could ask the court to award her a portion. Here, Wilma is not likely to succeed because she bought a boat with her own funds, owns a townhouse and still has a pension coming in. Therefore, the court will likely award the whole settlement claim to Harry but if the community paid any medical expenses as a result of the settlement claim, Wilma could ask the court to reimburse

her for half of those expenses.

Question #4 Final Word Count = 1009

END OF EXAM



5)

What Claims may Peter make under the U.S. Constitution against State X.

To bring a case to a federal court which has limited jurisdiction the court can only hear cases and controversies upon which the court can redress by a favorable decision to the plaintiff. The court has jurisdiction to hear federal question cases and diversity between parties who have diversity of citizenship and meet the amount of controversy. Here, Peter must show he has standing and that the court has jurisdiction over the defendant, State X, to properly resolve the controversy. Commonly, federal questions will apply because Peter can state constitutional grounds in several areas discussed below if he has standing.

Standing

Peter is required to show that he has been injured or imminent injury based on the causation of the State X that the court can redress. Here, Peter grows melons and exclusively ships the melons using the Railroad (RR) bought by State X. State X has authorized that State X manufacturers with factories will have first choice in space on RR and because Peter has lost use, over the past five years, he has lost nearly all of his State X customers. Therefore, Peter can prove that when State X policy was enacted, Peter can prove the causal effects, but for the policy change, Peter has lost nearly all his clients. Peter has injury as a result of State X. The court can hear the case if it has jurisdiction over the matter and if it does determine Peter was harmed it can redress by a favorable decision to Peter.

Ripeness The court must hear a case only if there is indeed an injury, as stated above, Peter has lost nearly all his customers so the case will be considered to be ripe, which is one the court has authority to resolve.

11th amendment

The 11th amendment protects states for law suits by citizens. Here, however, the lawsuit is not one covered for damages and Peter is also allowed to sue subsidiaries or state officials. Here, this is a case in equity, Peter will be suing for injunctive relief not money and he can also sue the governor and the RR so the 11th

amendment will not apply and he may proceed under constitutional violations.

The Commerce Clause of the US Constitution states that Congress may regulate the instrumentalities, facilities, channels and activities that have a substantial impact on Commerce. The clause gives Congress very broad powers in regulating and the powers not mentioned specifically enacted by Congress to be preempted states for regulating in that field, will allow the states to regulate intrastate and interstate commerce. A state which enacts laws that either discriminates or unduly burdens commerce may be in violation of what is commonly termed the dormant commerce clause.

Dormant Commerce Clause

A state has the power to make laws to benefit the health, safety and welfare of its citizens but in doing so, if the law affects citizens outside the state boundaries in affecting commerce the law will be found unconstitutional. Here, State X acquired RR and determined that the manufacturer's with factories in the state shall have shipping preference on RR when shipping products. The state has a right to make a law regarding shipments, to determine rates for the benefit of the state citizens but if this law discriminates against outsiders or unduly burdens commerce between the states then it will be a violation of the dormant commerce clause.

Here, Peter, a citizen of State Y, will state that he is being discriminated against because he lives outside State X and he is not receiving equal treatment with the citizens in State X who receive first choice. Peter can also state, that because he is not receiving the same choice commerce of his melons can no longer be made so State X is unduly burdening his right to transportation on RR.

When discrimination occurs then the state must prove it has a compelling interest and to achieve that interest the means must be the least restrictive means. This balancing of interests the court finds that the compelling interest must outweigh the discrimination. Here, the Peter will argue even if the state has a right to regulate under the to benefit its own citizens it does not have a right to discriminate against outsiders. In addition, Peter can also prove that it unduly burdens commerce because he cannot guarantee shipments of ripe melons to customers in State X.

The reason for compelling the state to regulate should fail the compelling interest because the state shipping on the railroad is not enough to outweigh Peter's rights to access as, he no longer has access to the RR for shipments due to first choice rule. In addition, it could be said that it is not the least restrictive means to achieve its purpose, to ensure the citizens will be afforded opportunities to use the RR, the state could have come up with a better solution to accommodate all who use RR for shipping.

Therefore, the State will be in violation of the DCC because it not only discriminated but unduly burden commerce and did not have a compelling reason to do so.

The state will argue, that it is not the state, the state is acting as a market participant and therefore, since it is doing so it is no longer required to meet the DCC requirements.

Market participant.

Under market participant, a state who is no longer acting as a state but acting as a business will be in competition with other railroads and therefore will not be subject to DCC. This argument will because, the RR is 70% of all the rail freight in the state and when a state takes on the market participant it is competing with others in the field. Here, there is no competition so State X cannot use the market participant exception to be excluded from the DCC violation.

Under the 14th all citizens shall have the right to property. Under the Equal protection clause if a fundamental right, race or national origin is discriminated against then the state must meet the strict scrutiny test, if the discrimination is based on gender, the intermediate test is used. If discrimination does not meet the above to tests it is rational basis. Here, Peter is an outsider from State Y and he is being discriminated against the state Y citizens

How should the court rule

The court should find that the State have violated the DCC and the regulation should be found void

What Claims may Corporation make under the U.S. Constitution against State X

Standing

Ripeness

11th amendment

Equal protection clause

Substantive DP

Dormant Commerce Clause

Privileges and Immunities

How should the court rule?

Question #5 Final Word Count = 1128

END OF EXAM



6)

To: Tia Lucci

From: Applicant

Subject: Draft Argument for the Brief In the Matter of Abigail Watkins

Date: July 24, 2018

1 The conduct underlying the plea does not justify a finding of moral turpitude when the conduct for the plea is the conduct the court is to consider not the conduct of the actual act.

Under the Business and Professions Code Section 6101 a person who wilfully commits acts of moral turpitude allow the state bar to issue an order to show cause. In Chadwick, the court held moral turpitude is defined as a duty to fellowmen or society contrary to right of duty between man to man described as act of baseness, vileness or depravity in private and social duties succinctly to mean any crime or misconduct without excuse and the test is the same for felony, misdemeanor or no crime at all. Chadwick v. State Bar (Col. Sup. Ct., 1989). In order for the state bar to find Watkins guilty plea to be considered an act involving moral turpitude, the court must find her guilty plea was a result of conduct that is without excuse not just that she voluntarily pled guilty.

Watkins has been a member of the Columbia State Bar (CSB) since 1991 and has never been charged with any wrongdoing or disciplined for any actions by the CSB. Watkins is an attorney and joined the law office of Wakefield and Lester (Wakefield) in 2006. In 2011, Watkins assisted in the formation of Fort Software, Inc. (Fort) and Watkins stated she followed the stock online about Fort with the intention of purchasing stock. In June of 2015, Watkins noted that the rating recommendations on Fort stock upgrade from buy to strong buy, with shares at \$10.00. Watkins had surgery in July 2015 to repair a rotator cuff and received two prescriptions for pain medication. Here, Watkins states that events after her

turpitude when she pled guilty.

Watkins belief that she was not representing Fort, along with Watkins belief that counsel at Jordan & Haines would be representing Fort in the merger clearly shows that she did not have a grasp of the clear facts in the matter.

Therefore, the court should find that because Watkins' memory was not clear on the conversations and led her to believe she was not counsel for Fort that at the time she made the purchase of stock, she did not have the conduct described in the plea as one of being guilty of any crime of moral turpitude.

2 Watkins' testimony at the hearing does not justify a finding of moral turpitude requires the court to find clear and convincing evidence.

Testimony directly contradicts must be clear and convincing evidence for the State Bar to warrant a finding of moral turpitude. (In the Matter of Harold Salas, Review Dept. of State Bar Court, 2001). An honest if mistaken belief in innocence does not signal a lack of candor and cannot be founded merely on Respondent's different memory of events. (Id). Here, Watkins memory is not totally clear on the events that occurred between July and September of 2015. The questioning by Mr. Simonds representing the bar questioned Watkins' impairments. Simonds asked Watkins why she did not tell the doctor of the impairment when Watkins visited her doctor after the surgery. The inference Simonds was trying to make was by Watkins failing to mention that the effects of Percocet on her mental impairment at the surgery in July 2015, gives an inference that she was not exhibiting any signs of mental impairment. The conflicting testimony of Watkins, states she was impaired and could remember what was actually said at the conversation in August with Darmond. Additionally, the fact that Watkins, made inconsistent statements, one to the SEC stating she was not aware of the merger and then pleading guilty creates an inference that maybe she is lying. Watkins explains, she was just confused and was trying to sort out what she was thinking two years earlier and that she pled guilty not because she was guilty but because it was the best solution with the trade issue. To find clear and convincing evidence means that reasonable doubts must be resolved in favor of the accused attorney. If the equality of the inferences can

conclude that a finding of moral turpitude exists at the same time of finding an inference of innocence the innocence inference must be chosen. (Id). The establishing clear and convincing evidence is doubtful that Simonds can prove any intent based on the inferences made at the hearing.

Therefore, the court should find that Watkins testimony at the hearing is a disputed inference of fact and upon whether it was an inference proving a finding of moral turpitude the court should find for the innocent inference must be chosen.

Question #6 Final Word Count = 1237

END OF EXAM